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ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GEN-PROBE INCORPORATED,

Plaintiff,

v.

VYSIS, INC.,

Defendant.

No. 99cv2668 H (AJB)

**STIPULATION AND ~~PROPOSED~~ ORDER
PERMITTING GEN-PROBE INCORPORATED TO
FILE REPLY MEMORANDUM OF POINTS AND
AUTHORITIES IN EXCESS OF TEN (10) PAGES IN
SUPPORT OF MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Date: June 8, 2001
Time: 10:30 a.m.
Dept: Courtroom 1

I. FACTS

1. Whereas, Plaintiff Gen-Probe Incorporated has filed a Motion for Partial Summary Judgment, which is set to be heard by this Court on June 8, 2001 at 10:30 a.m.

2. Whereas, due to the nature and number of issues to be addressed in its Reply Memorandum of Points Authorities, Gen-Probe believes in good faith that it is necessary for it to exceed the ten (10) page limitation set forth in Local Rule 7.1(h) in order to adequately brief the myriad of issues for this Court and seeks leave of Court to do so;

3. Whereas, counsel for the parties have met and conferred and Defendant Vysis, Inc. has no objection to Gen-Probe filing a reply memorandum in excess of ten (10) pages, but not to

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1 exceed fifteen (15) pages.

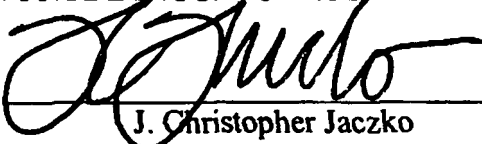
2 **II. STIPULATION**

3 The parties, through their respective counsel, stipulate that Gen-Probe shall be entitled to
4 file and serve a Reply Memorandum of Points and Authorities in Support of its Motion for Partial
5 Summary Judgment that is in excess of ten (10) pages, but not to exceed fifteen (15) pages in
6 length.

7 Dated: May 30, 2001

STEPHEN P. SWINTON
J. CHRISTOPHER JACZKO
COOLEY GODWARD LLP

R. WILLIAM BOWEN, JR.
GEN-PROBE INCORPORATED

By: 
J. Christopher Jaczko

Attorneys for Plaintiff
GEN-PROBE INCORPORATED

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Dated: May ____, 2001

CHARLES E. LIPSEY (*pro hac vice*)
THOMAS W. BANKS (195006)
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
THOMAS W. BANKS (195006)

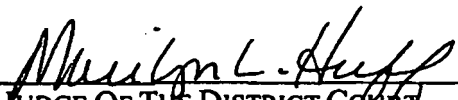
By: _____
Thomas W. Banks

Attorneys for Defendant
VYSIS, INC.

[PROPOSED] ORDER

IT IS SO ORDERED

Dated: 6/1/01


JUDGE OF THE DISTRICT COURT

1 exceed fifteen (15) pages.

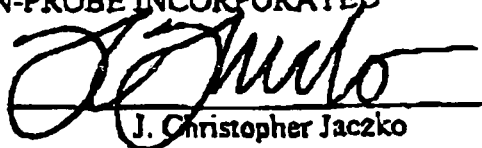
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7 Dated: May 30, 2001

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J. CHRISTOPHER JACZKO
COOLEY GODWARD LLP

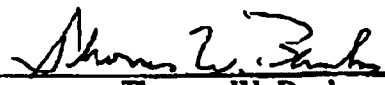
R. WILLIAM BOWEN, JR.
GEN-PROBE INCORPORATED

By: 
J. Christopher Jaczko

Attorneys for Plaintiff
GEN-PROBE INCORPORATED

13
14
15 Dated: May 30, 2001

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FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
THOMAS W. BANKS (195006)

By: 
Thomas W. Banks

Attorneys for Defendant
VYSIS, INC.

[PROPOSED] ORDER

22 **IT IS SO ORDERED**

23
24
25 Dated: _____

JUDGE OF THE DISTRICT COURT

PROOF OF SERVICE
(FRCP 5)

I am a citizen of the United States and a resident of the State of California. I am employed in San Diego, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My business address is 4365 Executive Drive, Suite 1100, San Diego, California 92121-2128. On the date set forth below I served the documents described below in the manner described below:

1. **STIPULATION AND [PROPOSED] ORDER PERMITTING GEN-PROBE INCORPORATED TO FILE REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN EXCESS OF TEN (10) PAGES IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT**

(BY U.S. MAIL) I am personally and readily familiar with the business practice of Cooley Godward llp for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Palo Alto, California.

(BY MESSENGER SERVICE) by consigning the document(s) to an authorized courier and/or process server for hand delivery on this date. See attached Proof of Personal Service.

(BY FACSIMILE) I am personally and readily familiar with the business practice of Cooley Godward llp for collection and processing of document(s) to be transmitted by facsimile and I caused such document(s) on this date to be transmitted by facsimile to the offices of addressee(s) at the numbers listed below.

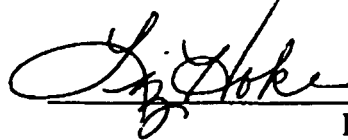
(BY OVERNIGHT MAIL) I am personally and readily familiar with the business practice of Cooley Godward llp for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by Federal Express for overnight delivery.

on the following part(ies) in this action:

1 Thomas W. Banks Esq.
2 Finnegan, Henderson, Farabow, et al.
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5 Tel: (650) 849-6600
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7 Attorneys for Vysis, Inc.

John H. L'Estrange, Jr. Esq.
Wright and L'Estrange
701 B Street, Suite 1550
San Diego, CA 92101
Tel: (619) 231-4844 4106 2110 3259
Fax: (619) 231-6710

8 Executed on May 30, 2001, at San Diego, California.

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10 _____
11 Liz Hoke

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1 STEPHEN P. SWINTON (106398)
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9 BROBECK PHLEGER & HARRISON LLP
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11 San Diego, CA 92130
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14 R. WILLIAM BOWEN, JR. (102178)
15 GEN-PROBE INCORPORATED
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17 San Diego, CA 92121-4362
18 Telephone: (858) 410-8918
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20 Attorneys for Plaintiff
21 Gen-Probe Incorporated

22 UNITED STATES DISTRICT COURT

23 SOUTHERN DISTRICT OF CALIFORNIA

24 GEN-PROBE INCORPORATED,

25 Plaintiff,

26 v.

27 VYSIS, INC.,

28 Defendant.

No. 99cv2668 H (AJB)
HON. MARILYN L. HUFF

**STIPULATION AND [PROPOSED] ORDER
ALLOWING GEN-PROBE INCORPORATED TO
FILE UNDER SEAL CERTAIN DOCUMENTS UPON
WHICH IT RELIES TO SUPPORT ITS REPLY RE
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Date: June 8, 2001
Time: 10:30 a.m.
Dept.: Courtroom 1

29 I. FACTS

30 1. On September 18, 2000, this Court entered a Protective Order to govern the use and
31 disclosure of confidential information disclosed in discovery in this litigation, a true and correct
32 copy of that Protective Order and the subsequent amendment thereto are attached hereto as Exhibit

33 A. Pursuant to paragraph 13 of the Protective Order, no documents shall be filed under seal unless

1 the Court issues a separate Order upon application of the affected party.

2 2. Gen-Probe Incorporated ("Gen-Probe") has moved for partial summary judgment
3 and in support of its reply papers will lodge documents and testimony that have been designated by
4 Vysis as confidential, including its Reply Memorandum.

5 3. As Exhibit 13 in support of its Motion for Partial Summary Judgment, Gen-Probe
6 relies upon excerpts from the transcript of the deposition of Anthony J. Janiuk, taken May 16,
7 2001. Pursuant to the Protective Order, the deposition transcript is Confidential-Attorneys Only.

8 4. As Exhibit 14 in support of its Motion for Partial Summary Judgment, Gen-Probe
9 relies upon excerpts from the transcript of the deposition of David Ward, Ph.D., taken May 18,
10 2001. Pursuant to the Protective Order, the deposition transcript is Confidential-Attorneys Only.

11 5. As Exhibit 16 in support of its Motion for Partial Summary Judgment, Gen-Probe
12 relies upon excerpts from the transcript of the deposition of Jon Laurie, Ph.D., taken February 15,
13 2001. Pursuant to the Protective Order, the deposition transcript is Confidential-Attorneys Only.

14 6. As Exhibit 17 in support of its Motion for Partial Summary Judgment, Gen-Probe
15 relies upon excerpts from the transcript of the deposition of Walter King, Ph.D., taken April 18,
16 2001. Pursuant to the Protective Order, the deposition transcript is Confidential-Attorneys Only.

17 7. As Exhibit 18 in support of its Motion for Partial Summary Judgment, Gen-Probe
18 relies upon excerpts from the transcript of the deposition of Donald Neil Halbert, Ph.D., taken
19 April 19, 2001. Pursuant to the Protective Order, the deposition transcript is Confidential-
20 Attorneys Only.

21 8. The relevant portions of the forgoing exhibits are contained in the sealed envelope
22 attached hereto as Exhibit "B" and are marked as Exhibits 13-18, respectively. The Reply
23 Memorandum is contained in the envelope marked as Exhibit "C".

24 **II. STIPULATION**

25 The parties, through their respective counsel, stipulate that the portions of Anthony Janiuk,
26 David Ward, Ph.D., Jon Lawrie, Ph.D., Walter King, Ph.D., and Donald Neil Halbert, Ph.D.
27 deposition transcripts upon which Gen-Probe relies to support its Motion for Partial Summary

28 ///


1 Judgment shall be filed under seal in accord with the terms of the Protective Order entered in this
2 case.

3 Dated: June 1, 2001

STEPHEN P. SWINTON
J. CHRISTOPHER JACZKO
COOLEY GODWARD LLP

DOUGLAS E. OLSON
BROBECK PHLEGER & HARRISON LLP

R. WILLIAM BOWEN, JR.
GEN-PROBE INCORPORATED

By: 
J. Christopher Jaczko

Attorneys for Plaintiff
Gen-Probe Incorporated

11
12 Dated: June 1, 2001

CHARLES E. LIPSEY (*pro hac vice*)
THOMAS W. BANKS (195006)
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
THOMAS W. BANKS (195006)

By: _____
Thomas W. Banks

Attorneys for Defendant
Vysis, Inc.

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20 **IT IS SO ORDERED**

21 Gen-Probe may file the excerpts of the deposition transcripts of Anthony Janiuk, David
22 Ward, Ph.D., Jon Lawrie, Ph.D., Walter King, Ph.D., and Donald Neil Halbert, Ph.D., upon which
23 its relies to support its Motion for Partial Summary Judgment in accord with the terms of the
24 Protective Order entered in this case.

25
26 Dated: _____

JUDGE OF THE DISTRICT COURT

1 Judgment shall be filed under seal in accord with the terms of the Protective Order entered in this
2 case.

3 Dated: June 1, 2001

STEPHEN P. SWINTON
J. CHRISTOPHER JACZKO
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By: _____
J. Christopher Jaczko

Attorneys for Plaintiff
Gen-Probe Incorporated

12 Dated: June 1, 2001

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THOMAS W. BANKS (195006)

By: Thomas W. Banks
Thomas W. Banks

Attorneys for Defendant
Vysis, Inc.

20 **IT IS SO ORDERED**

21 Gen-Probe may file the excerpts of the deposition transcripts of Anthony Janiuk, David
22 Ward, Ph.D., Jon Lawrie, Ph.D., Walter King, Ph.D., and Donald Neil Halbert, Ph.D., upon which
23 its relies to support its Motion for Partial Summary Judgment in accord with the terms of the
24 Protective Order entered in this case.

26 Dated: _____

JUDGE OF THE DISTRICT COURT